
HOUSE BILL No. 1159

DIGEST OF INTRODUCED BILL

Citations Affected: IC 25-26-13; IC 34-30-2-100.5; IC 35-42-5-1; IC 35-45-2-1.

Synopsis: Pharmacy security. Permits a pharmacist to refuse to honor a prescription in certain circumstances. Provides additional penalties for robbery and intimidation if the offense occurs on the premises of a pharmacy. Requires the Indiana board of pharmacy to compile data on incidents of criminal conduct that occur on the premises of a pharmacy. Allows the board of pharmacy to require a pharmacy to implement certain security measures.

Effective: July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Public Health.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1159

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 25-26-13-2, AS AMENDED BY P.L.1-2002, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this chapter:

"Aggravated felony" means:

- (1) murder (IC 35-42-1-1);
- (2) attempted murder (IC 35-41-5-1);
- (3) voluntary manslaughter (IC 35-42-1-3);
- (4) involuntary manslaughter (IC 35-42-1-4);
- (5) reckless homicide (IC 35-42-1-5);
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2);



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(12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1(b));

(13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1);

(14) intimidation as a Class D felony under IC 35-45-2-1(b)(1)(B)(vi); or

(15) arson (IC 35-43-1-1).

"Board" means the Indiana board of pharmacy.

"Compile data" means the collection and maintenance of written documentation or electronic records, or both, that includes the following:

(1) The name of the perpetrator and the name of the victim, if available, of an incident of criminal conduct.

(2) The location at which an incident of criminal conduct occurred.

(3) The date on which an incident of criminal conduct occurred.

(4) A description of personal injury and property damage that occurred as a direct result of an incident of criminal conduct.

(5) Each offense for which the perpetrator of an incident of criminal conduct was convicted, if any.

(6) The sentence imposed on the perpetrator of an incident of criminal conduct, if any.

"Controlled drugs" are those drugs on schedules I through V of the Federal Controlled Substances Act or on schedules I through V of IC 35-48-2.

"Counseling" means effective communication between a pharmacist and a patient concerning the contents, drug to drug interactions, route, dosage, form, directions for use, precautions, and effective use of a drug or device to improve the therapeutic outcome of the patient through the effective use of the drug or device.

"Dispensing" means issuing one (1) or more doses of a drug in a suitable container with appropriate labeling for subsequent administration to or use by a patient.

"Drug" means:

(1) articles or substances recognized in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them;

(2) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(3) articles other than food intended to affect the structure or any

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function of the body of man or animals; or

(4) articles intended for use as a component of any article specified in subdivisions (1) through (3) and devices.

"Drug order" means a written order in a hospital or other health care institution for an ultimate user for any drug or device, issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, which is immediately reduced to writing by the pharmacist, registered nurse, or other licensed health care practitioner authorized by the hospital or institution. The order shall contain the name and bed number of the patient; the name and strength or size of the drug or device; unless specified by individual institution policy or guideline, the amount to be dispensed either in quantity or days; adequate directions for the proper use of the drug or device when it is administered to the patient; and the name of the prescriber.

"Drug regimen review" means the retrospective, concurrent, and prospective review by a pharmacist of a patient's drug related history that includes the following areas:

(1) Evaluation of prescriptions or drug orders and patient records for drug allergies, rational therapy contradictions, appropriate dose and route of administration, appropriate directions for use, or duplicative therapies.

(2) Evaluation of prescriptions or drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions.

(3) Evaluation of prescriptions or drug orders and patient records for adverse drug reactions.

(4) Evaluation of prescriptions or drug orders and patient records for proper utilization and optimal therapeutic outcomes.

"Drug utilization review" means a program designed to measure and assess on a retrospective and prospective basis the proper use of drugs.

"Device" means an instrument, **an** apparatus, **an** implement, **a** machine, **a** contrivance, **an** implant, **an** in vitro reagent, or other similar or related article including any component part or accessory, which is:

(1) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to them;

(2) intended for use in the diagnosis of disease or other conditions or the cure, mitigation, treatment, or prevention of disease in ~~man~~ **humans** or other animals; or

(3) intended to affect the structure or any function of the body of ~~man~~ **humans** or other animals and which does not achieve any of its principal intended purposes through chemical action within or

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on the body of ~~man~~ **humans** or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

"Incident of criminal conduct" means an aggravated felony that is committed or allegedly committed on the premises of a pharmacy licensed under this chapter and results in:

- (1) a report to a law enforcement agency (as defined in IC 27-2-19-3) of the commission of the aggravated felony;**
- (2) an arrest for the aggravated felony; or**
- (3) a conviction for the aggravated felony.**

"Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

"Legend drug" has the meaning set forth in IC 16-18-2-199.

"License" and "permit" are interchangeable and mean a written certificate from the Indiana board of pharmacy for the practice of pharmacy or the operation of a pharmacy.

"Nonprescription drug" means a drug that may be sold without a prescription and that is labeled for use by a patient in accordance with state and federal laws.

"Occurs on the premises of a pharmacy" refers to an act that results in a report, an arrest, or a conviction for an incident of criminal conduct that:

(1) is committed against:

- (A) a patron of a pharmacy;**
- (B) an employee of a pharmacy; or**
- (C) a pharmacist intern or pharmacist extern; and**

(2) transpires:

(A) within a:

- (i) building or structure if the entire building or structure is a pharmacy; or**
- (ii) part of the building or structure that is operated as a pharmacy if the entire building or structure is not a pharmacy; or**

(B) on the curtilage of the building or structure described in clause (A)(i) and (A)(ii).

"Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, or municipality, or a legal representative or agent, unless this chapter expressly provides otherwise.

"Practitioner" has the meaning set forth in IC 16-42-19-5.

"Pharmacist" means a person licensed under this chapter.

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"Pharmacist extern" means a pharmacy student enrolled full-time in an approved school of pharmacy and who is working in a school sponsored, board approved program related to the practice of pharmacy.

"Pharmacist intern" means a person who is working to secure additional hours of practice and experience prior to making application for a license to practice as a pharmacist.

"Pharmacy" means any facility, department, or other place where prescriptions are filled or compounded and are sold, dispensed, offered, or displayed for sale and which has as its principal purpose the dispensing of drug and health supplies intended for the general health, welfare, and safety of the public, without placing any other activity on a more important level than the practice of pharmacy.

"The practice of pharmacy" or "the practice of the profession of pharmacy" means a patient oriented health care profession in which pharmacists interact with and counsel patients and with other health care professionals concerning drugs and devices used to enhance patients' wellness, prevent illness, and optimize the outcome of a drug or device, by accepting responsibility for performing or supervising a pharmacist intern, a pharmacist extern, or an unlicensed person under section 18(a)(4) of this chapter to do the following acts, services, and operations:

- (1) The offering of or performing of those acts, service operations, or transactions incidental to the interpretation, evaluation, and implementation of prescriptions or drug orders.
- (2) The compounding, labeling, administering, dispensing, or selling of drugs and devices, including radioactive substances, whether dispensed under a practitioner's prescription or drug order, or sold or given directly to the ultimate consumer.
- (3) The proper and safe storage and distribution of drugs and devices.
- (4) The maintenance of proper records of the receipt, storage, sale, and dispensing of drugs and devices.
- (5) Counseling, advising, and educating patients, patients' caregivers, and health care providers and professionals, as necessary, as to the contents, therapeutic values, uses, significant problems, risks, and appropriate manner of use of drugs and devices.
- (6) Assessing, recording, and reporting events related to the use of drugs or devices.
- (7) Provision of the professional acts, professional decisions, and professional services necessary to maintain all areas of a patient's

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pharmacy related care as specifically authorized to a pharmacist under this article.

"Prescription" means a written order or an order transmitted by other means of communication from a practitioner to or for an ultimate user for any drug or device containing the name and address of the patient, the name and strength or size of the drug or device, the amount to be dispensed, adequate directions for the proper use of the drug or device by the patient, and the name of the practitioner issued and, if the prescription is in written form, signed by a practitioner.

"Prescription" means a written order or an order transmitted by other means of communication from a practitioner to or for an ultimate user for any drug or device containing:

- (1) the name and address of the patient;
- (2) the date of issue;
- (3) the name and strength or size (if applicable) of the drug or device;
- (4) the amount to be dispensed (unless indicated by directions and duration of therapy);
- (5) adequate directions for the proper use of the drug or device by the patient;
- (6) the name of the practitioner; and
- (7) the signature of the practitioner if the prescription is in written form.

"Qualifying pharmacist" means the pharmacist who will qualify the pharmacy by being responsible to the board for the legal operations of the pharmacy under the permit.

"Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records, or other written indicia, documents, or objects which are used in any way in connection with the purchase, sale, or handling of any drug or device.

"Sale" means every sale and includes:

- (1) manufacturing, processing, transporting, handling, packaging, or any other production, preparation, or repackaging;
- (2) exposure, offer, or any other proffer;
- (3) holding, storing, or any other possession;
- (4) dispensing, giving, delivering, or any other supplying; and
- (5) applying, administering, or any other using.

SECTION 2. IC 25-26-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The board may:

- (1) promulgate rules and regulations under IC 4-22-2 for implementing and enforcing this chapter;

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(2) establish requirements and tests to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications for applicants for pharmacists' licenses;

(3) refuse to issue, deny, suspend, or revoke a license or permit or place on probation or fine any licensee or permittee under this chapter;

(4) regulate the sale of drugs and devices in ~~the state of~~ Indiana;

(5) impound, embargo, confiscate, or otherwise prevent from disposition any drugs, medicines, chemicals, poisons, or devices which by inspection are deemed unfit for use or would be dangerous to the health and welfare of the citizens of ~~the state of~~ Indiana; the board shall follow those embargo procedures found in IC 16-42-1-18 through IC 16-42-1-31, and persons may not refuse to permit or otherwise prevent members of the board or their representatives from entering such places and making such inspections;

(6) prescribe minimum standards with respect to physical characteristics of pharmacies, as may be necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public;

(7) subject to IC 25-1-7, investigate complaints, subpoena witnesses, **and** schedule and conduct hearings on behalf of the public interest on any matter under the jurisdiction of the board;

(8) prescribe the time, place, method, manner, scope, and subjects of licensing examinations which shall be given at least twice annually; ~~and~~

(9) require a permittee to implement security measures designated by the board based on an incident of criminal conduct; and

(10) perform such other duties and functions and exercise such other powers as may be necessary to implement and enforce this chapter.

(b) The board shall adopt rules under IC 4-22-2 for the following:

(1) Establishing standards for the competent practice of pharmacy.

(2) Establishing the standards for a pharmacist to counsel individuals regarding the proper use of drugs.

(c) The board may grant or deny a temporary variance to a rule it has adopted if:

(1) the board has adopted rules which set forth the procedures and standards governing the grant or denial of a temporary variance;

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and

(2) the board sets forth in writing the reasons for a grant or denial of a temporary variance.

(d) The board shall compile data on each incident of criminal conduct. The board may adopt rules under IC 4-22-2 to implement this subsection.

SECTION 3. IC 25-26-13-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15.5. (a) A pharmacist who, in good faith, refuses to honor a prescription because in the pharmacist's professional judgment the honoring of the prescription would:**

(1) be contrary to law;

(2) be against the best interest of the patient;

(3) aid or abet an addiction or a habit;

(4) be contrary to the health and safety of the patient; or

(5) endanger the safety of any person employed by the pharmacy or a pharmacist intern or pharmacist extern;

is immune from criminal prosecution and civil liability for refusing to honor the prescription.

(b) A pharmacist:

(1) may refuse to honor a prescription; and

(2) is immune from criminal prosecution and civil liability for refusing to honor the prescription;

if the pharmacist believes in good faith that the person presenting the prescription or the person for whose benefit the prescription is presented is a person who has been convicted of intimidation (as described in IC 35-45-2-1(b)(1)(B)(vi)) or robbery (as described in IC 35-42-5-1(b)).

SECTION 4. IC 25-26-13-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 18.5. The board may:**

(1) refuse to issue a renewal of a pharmacy permit;

(2) suspend a pharmacy permit; or

(3) revoke a pharmacy permit;

if a permittee fails to implement security measures within the time and in the manner designated by the board.

SECTION 5. IC 34-30-2-100.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 100.5. IC 25-26-13-18.5 (Concerning a pharmacist refusing to honor a prescription).**

SECTION 5. IC 35-42-5-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A person who knowingly or intentionally takes property from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or

(2) by putting any person in fear;

commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

(b) A person who knowingly or intentionally takes property from a pharmacy (as defined in IC 25-26-13-2):

(1) by using force against or threatening the use of force against; or

(2) by putting in fear;

any person who is a patron of the pharmacy, who is employed by the pharmacy, or who is a pharmacist intern or a pharmacist extern commits robbery, a Class B felony. However, the offense is a Class A felony if it results in serious bodily injury to any person other than the person committing the offense.

SECTION 7. IC 35-45-2-1, AS AMENDED BY P.L.175-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A person who communicates a threat to another person, with the intent:

(1) that the other person engage in conduct against the other person's will;

(2) that the other person be placed in fear of retaliation for a prior lawful act; or

(3) of causing:

(A) a dwelling, a building, or another structure; or

(B) a vehicle;

to be evacuated;

commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Class D felony if:

(A) the threat is to commit a forcible felony;

(B) the person to whom the threat is communicated:

(i) is a law enforcement officer;

(ii) is a judge or bailiff of any court;

(iii) is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;

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(iv) is an employee of a school corporation; ~~or~~
 (v) is a community policing volunteer; **or**
(vi) is an employee of a pharmacy (as defined in
IC 25-26-13-2), a patron of a pharmacy, or a pharmacist
intern or pharmacist extern;

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(c) "Threat" means an expression, by words or action, of an intention to:

(1) unlawfully injure the person threatened or another person, or damage property;

(2) unlawfully subject a person to physical confinement or restraint;

(3) commit a crime;

(4) unlawfully withhold official action, or cause such withholding;

(5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) expose the person threatened to hatred, contempt, disgrace, or ridicule;

(7) falsely harm the credit or business reputation of the person threatened; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

SECTION 8. [EFFECTIVE JULY 1, 2004] **IC 35-42-5-1 and IC 35-45-2-1, both as amended by this act, apply only to offenses committed after June 30, 2004.**

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